IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13935 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASO COOPERATIVE BANK LTD THROUGH DILIPBHAI AMIN

Versus

HARSHADBHAI DHARAMDAS PATEL

Appearance:

1. Special Civil Application No. 13935 of 2004

MR YATIN SONI for Petitioner No. 1

MR SN THAKKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 19/10/2004

ORAL JUDGEMENT

Rule. Shri S.N.Thakker, Learned Advocate who appears on caveat waives service of rule on behalf of the respondents. With the consent of the parties, the matter

is taken up for final hearing today.

2. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Gujarat State Cooperative Tribunal dated 5.10.2004 in Misc. Application No.468 of 2004 in Appeal No. 416 of 2003 by which the Tribunal has while granting the stay of further implementation and operation of the judgment and award passed by the Board of Nominees, Anand in Lavad Suit No. 460 of 2001 imposed condition of depositing only 30% of the suit amount. It appears from the record that the petitioner bank has filed a lavad suit against the partnership firm as well as the petitioner (guarantor) being Lavad Suit No. 460 of 2001 for an amount of Rs.15,50,238/- with interest at the rate of 20/% p.a. with effect from 1.1.2001. Being aggrieved and dissatisfied with the same, the respondents preferred appeal before the Gujarat State Cooperative Tribunal being Appeal No. 416 of 2003. In view of the fact that in the meantime, there was a seal applied by the respondent bank on the rice mill which according to the respondents belongs to them which is disputed by Shri Soni, Learned Advocate of the petitioner and stated that the rice mill belongs to the partnership firm and therefore, the respondents preferred an application to remove the seal applied by the petitioner bank on the rice bill and an order came to be passed on 17.4.2003 by which the respondents were directed to deposit an amount of 30% of the suit amount within a period of two months which is deposited by the respondents. Thereafter, the stay application came to be heard by the Tribunal and the said application came to be dismissed by the Tribunal by order dated 24.7.2003.

It appears that as the respondents were of the opinion tha the order dated 2.7.2003 was on application for removing the seal and was not on the stay application and therefore, they preferred SCA No. 1349 of 2003 before this Court and the same came to be disposed of as withdrawn by order dated 28.7.2004 allowing the respondents to move an appropriate review application before the Tribunal for clarification that the said application was not heard but the application for opening the seal was heard. Thereafter, the respondents have preferred a review application being Misc. Application No.468 of 2004 in Appeal No. 416 of 2003 and after considering the same, the Tribunal has passed the impugned order on 5.10.2004 which is challenged by the petitioner bank by way of this Special Civil Application under Article 227 of the Constitution of India.

3. Shri Yatin Soni, Learned Advocate for the petitioner had submitted that in view of the fact that there is a judgment and award passed against the respondents (guarantor) and also against the partnership firm and therefore, the Tribunal ought not to have passed an order of staying the judgment and order by depositing only 30% of the suit amount. He has further submitted that in fact, the respondents have become the partner of the Rice Mill which was of the ownership of the partnership firm and the partnership firm has not challenged the judgment and award passed by the Board of Nominees.

4. Shri Satyen Thakker, Learned Advocate appearing for the respondents had submitted that in fact, the Rice Mill belongs to the respondents who was at the relevant time the guarantor and he has spent a huge amount and it is established by him. It is also further submitted that the respondents have already deposited 30% of the suit amount as ordered by the Tribunal by order dated 27.3.2003 which is not challenged by the petitioner bank and therefore, it is not open for the petitioner now to challenge the subsequent order passed in a Review application and therefore, requested to dismiss the present petition by further submitting that the impugned order is a interlocutory order and there is no jurisdictional error committed by the Tribunal and therefore, requested not to exercise powers under Article 227 of the Constitution of India.

5. Heard the Learned Advocates appearing on behalf of the parties.

6. In fact, from the order passed by the Tribunal dated 5.10.2004, it is not possible to appreciate what has weighed with the Tribunal in granting stay on condition to deposit 30% of the suit amount. At the same time, it is also required to be considered that at present, there is a seal applied by the petitioner bank on the Rice mill and if the seal continues, it is not likely to benefit either parties. It is also required to be considered that the petitioner has already deposited 30% of the suit amount as ordered by the Tribunal on 27.3.2003 which is not challenged by the petitioner bank. However, if the following directions is issued, it will meet the ends of justice and it will be in the interest of the petitioner bank as well as the respondents:-

i. The order passed by the Tribunal dated 5.10.2004 in Misc. Application No.468 of 2004 in Appeal

No. 416 of 2003 is modified to the extent that the respondents are directed to deposit a further amount of 20% of the decreetal amount within a period of six weeks from today by two equal installments being 10% of the decreetal amount to be deposited by the respondents within a period of three weeks from today and the balance amount of 10% of the decreetal amount to be deposited by the respondents within a period of three weeks thereafter. The respondents to file an undertaking to the effect that they will deposit the aforesaid amount of 20% of the decreetal amount as sated hereinabove and they will not transfer the said mill. Such an undertaking is to be filed by the respondents within a period of one week from today with a copy to the petitioner bank.

ii. On deposit of 10% of the decreetal amount within a period of three weeks from today as directed hereinabove, the petitioner bank is directed to remove the seal which is applied on the Rice Mill. However, the attachment of the Rice Mill in favour of the bank shall continue.

iii. On deposit of further 20% of the decreetal amount as directed hereinabove, the Gujarat State Cooperative Tribunal is directed to decide and dispose of Appeal No. 416 of 2003 on merits and in accordance with law without considering the question of limitation meaning thereby, the delay in preferring the appeal is condoned.

Rule is made absolute to the aforesaid extent with no order as to costs. Liberty to apply in case of difficulty. Direct Service is permitted.

(M.R.Shah, J)
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